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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA Commercial Mortgage Company,

Debtor.

Case No. BK-S-06-10725-LBR
Chapter 11

**DECLARATION OF GEOFFREY L.
BERMAN IN SUPPORT OF USACM
TRUST'S MOTION TO ALLOW
PROOFS OF CLAIM BASED UPON
INVESTMENT IN THE COPPER
SAGE PHASE II LOAN**

Hearing Date: September 30, 2011
Hearing Time: 9:30 a.m.
Estimated Time for Hearing: 10 minutes

I, Geoffrey L. Berman, declare under penalty of perjury:

1. I am an adult person competent to testify in court.

2. I make this declaration based upon my personal knowledge, and upon the records USA Commercial Mortgage Company.

3. I am the Trustee of the USACM Liquidating Trust ("USACM Trust"), which is an entity created by the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization ("Plan"), in the jointly-administered bankruptcy cases, In re USA Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States Bankruptcy Court for the District of Nevada.

4. USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding for an acquisition and development loan to a borrower identified as “Copper Sage Commerce Center, LLC.” A copy of the Offer Sheet is attached hereto as **Exhibit B** and incorporated by this reference. The Offer Sheet indicated that the Borrower was a joint venture between USA Investment Partners and Robert Russell/A-D Development Group, LLC. The total loan amount proposed was \$11.3 million. The Offer Sheet described the investment as a “First Trust Deed Investment” and noted that the investment would be secured by a first deed of trust on 8.45 acres of property to be developed into warehouse space. The Offer Sheet further provided that the loan had a 75% loan to value based on the sell-out price for the buildings. The loan was intended to acquire the property and construct the buildings.

5. On March 1, 2006, Borrower made and delivered to various lenders, including the Direct Lenders identified in **Exhibit A**, a “Promissory Note Secured by Deed of Trust” (the “Note”) and a Construction Loan Agreement. The Note and Loan Agreement provided for a loan in the initial principal amount of \$3,550,000, which could be increased up to \$11,300,000. The Note was secured by a “Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing” (“Deed of Trust”) that was recorded in the official records of Clark County, Nevada on March 6, 2006, at Instrument Number 200603-6-0003310. The Note was also supported by an guaranty executed by Thomas Hantges, Joseph Milanowski, and Robert Russell. The Trust has not found a copy of the guaranty. The Offer Sheet also provided that “real estate markets can be negatively impacted by interest rates, availability of capital, supply and demand factors, and general economic conditions locally, regionally, and nationally” and warned the Direct Lenders to keep these risks in mind.

6. The USACM “Loan Summary” dated July 31, 2006 and filed in this case shows that Borrower was “Non-performing” on the Note as of July 31, 2006, with

1 \$3,550,000 in principal outstanding at that time. USACM did not disperse any additional
2 funds to Copper Sage after the initial disbursement. Copper Sage Commerce Center,
3 LLC asserted a claim against USACM in the amount of \$3.5 million. [POC No. 10725-
4 00792-2.] Copper Sage's Proof of Claim alleged that USACM failed to fully fund the
5 remainder of the loan in breach of the loan agreement. It also alleged an intentional
6 misrepresentation by USACM. *Id.* USACM filed an objection to Copper Sage's proof of
7 claim. [DE 3077]

8 7. USACM filed an adversary claim against, among others, Copper Sage and
9 Robert Russell. [DE 6191; Adv. Case. No. 08-01119.] Copper Sage ultimately agreed to
10 release its claims against USACM as part of a settlement of USACM's adversary claim
11 against it.

12 I declare under penalty of perjury that the foregoing is true and correct.

13 Dated: August 11, 2011

14
15 /s/ Geoffrey L. Berman

Geoffrey L. Berman

16
17 Copy of the foregoing mailed (without
18 Exhibits) by first class postage prepaid
19 U.S. Mail on August 11, 2011 to
20 All investors listed on Exhibit A
Attached.

21 /s/ Renee Creswell

Renee Creswell